

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Adrian Alex,)	
)	
Petitioner,)	ORDER ADOPTING
)	REPORT AND RECOMMENDATION
vs.)	
)	
Tim Schuetzle, Warden,)	
North Dakota State Penitentiary,)	
)	Case No. 1:05-cv-113
Respondent.)	

Before the Court is Petitioner Adrian Alex's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody, filed on October 31, 2005. On February 2, 2006, Respondent Tim Schuetzle filed a Motion to Dismiss. Magistrate Judge Charles S. Miller, Jr. reviewed the pending motion, and, on June 5, 2006, submitted a Report and Recommendation. Judge Miller recommended that Schuetzle's motion be granted in part and denied in part.

Alex did not object to the Report and Recommendation. However, Respondent Tim Schuetzle filed an objection on June 15, 2006. See Docket No. 9. Schuetzle asserts one of his arguments was mis-characterized in the Report and Recommendation. The Court has carefully reviewed Schuetzle's objection and the exhibits it references, as well as the Report and Recommendation, and concludes that regardless of how Schuetzle's argument is characterized, the proposed recommendation would remain the same.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the record as a whole and finds that the Report and Recommendation is persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 8). The Court **GRANTS** in part and **DENIES** in part, Schuetzle's Motion to Dismiss.

1. Schuetzle's Motion to Dismiss is denied to the extent it request dismissal of Alex's Petition, but is granted to the extent that Schuetzle requests that Alex be required to exhaust any remedies made available by the North Dakota Supreme Court.
2. Alex's Petition under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody is stayed and held in abeyance subject to the following conditions:
 - a. Alex must file a petition for habeas corpus relief with the North Dakota Supreme Court within 30 days of this order. The petition must set forth the claims that are made in the petition to this Court, and Alex must exhaust any remedies made available by the North Dakota Supreme Court, including any requirement by the North Dakota Supreme Court that Alex return to state district court followed by exhaustion of any remedies thereafter available before the North Dakota Supreme Court.
 - b. Within 30 days of Alex having completed the exhaustion of any remedies made available by the state courts, Alex shall file a motion to lift the stay or otherwise notify the court that exhaustion of remedies has been completed and that he desires to proceed with his petition in this court.
3. Any failure to comply with the foregoing requirements will be grounds for dismissal of Alex's petition to this court.

IT IS SO ORDERED.

Dated this 27th day of June, 2006.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court